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## RECENT CASES

ACCORD AND SATISFACTION—LIQUIDATED CLAIM—CONSIDERATION.—*GALOWITZ V. HENDLIN*, 150 N. Y. SUPP. 641.—*Held*, where a demand was liquidated and a smaller amount was accepted and a receipt in full given, the receipt did not amount to an accord and satisfaction, the element of consideration being wanting.

It is well settled that where a claim is unliquidated, or the amount thereof is in dispute, a payment and acceptance of a less sum than the claim in satisfaction is an accord and satisfaction. *Wheeling v. Baker*, 132 Mich. 507. The rule that payment of a smaller sum cannot be a satisfaction of a liquidated sum is based on a dictum in *Pennel's Case*, 3 Coke's Reports, 117. The reason for the rule being lack of consideration, courts have made exceptions to the rule wherever a technical consideration can be shown to exist. And so an agreement to accept a less sum secured, or differently secured, is held to be a good accord and satisfaction. *Kemmerer v. Kokendifer*, 65 Ill. App. 31. A payment in advance of a less sum than is due is considered to be a good consideration to support an accord and satisfaction. *Weiss v. Marks*, 206 Pa. 513. Acceptance by the creditor of the note of a third person in full satisfaction of the debt extinguishes such debt, though the note is for a less sum. *Wipperman v. Hardy*, 17 Ind. App. 142. The giving of a check for less than claim has been held to be a payment in a medium other than in what debtor was obliged to make and so constituted good consideration for accord and satisfaction. *American Seeding Mach. Co. v. Baker*, 104 N. E. (Ind.) 524. But the acceptance of a check for a less amount in full satisfaction, is not usually held to be a good accord and satisfaction. *National Art Co. v. Ellery*, 145 N. Y. Supp. 277; *Jordy v. Maxwell*, 56 So. (Fla.) 946. It has even been held that the payment of a less sum at a place other than that contemplated by the parties constitutes a good consideration for an accord and satisfaction. *Harper v. Graham*, 20 Ohio 105. A few states have repudiated the general rule and hold that the payment of a less sum in full satisfaction of a greater sum that is actually due is a good accord and satisfaction. *Frye v. Hubbell*, 74 N. H. 358; *Clayton v. Clark*, 74 Miss. 499. And several states have changed the general rule by statute and hold that the acceptance of a smaller sum for a debt due is binding and effectual unless vitiated by fraud. *Bisbee v. Haun*, 47 Me. 543. As to the effect of a receipt in full, the principal case lays down the doctrine that is generally followed. But a few states hold that where discharge of debt is evidenced by a written receipt for the smaller sum in full satisfaction of the greater, it is a binding release. *Dreyfus v. Roberts*, 75 Ark. 354; *Aborn v. Rathbone*, 54 Conn. 444.

BILLS AND NOTES—NEGOTIATION—PAYEE AS HOLDER IN DUE COURSE.—*LONG V. SHAFER ET AL.*, 171 S. W. (Mo.) 690.—*Held*, that the delivery of a negotiable instrument to the payee is not a "negotiation" under

the Negotiable Instruments Law, and such payee cannot therefore be a "holder in due course" within the meaning of that law.

It was well settled prior to the Act that a payee receiving in good faith and for value an instrument completed in the hands of the maker, was protected against the defense of misappropriation by the intermediary. *Munroe v. Bodier*, 8 C. B. 862; *South Boston Iron Co. v. Brown*, 63 Me. 139. By the weight of authority the same protection was accorded in the case of an instrument signed in blank and filled out contrary to authority. *Geddes v. Blackmore*, 132 Ind. 551; *Humphreys v. Finch*, 97 N. C. 303. Sometimes the payee was expressly held to be a "bona fide holder for value" or "holder in due course." *Moody v. Threlkeld*, 13 Ga. 55; *Weidman v. Symes*, 120 Mich. 657. In other cases the doctrine of estoppel was invoked. *Jones v. Shelbyville Insurance Co.*, 1 Metc. (Ky.) 58; *Armstrong v. National Bank*, 133 U. S. 433. A few cases held the payee charged with notice of defenses owing to the fact that the maker was a stranger. *Bowles Co. v. Clark*, 59 Wash. 336. Others charged him with notice of defenses on the ground that he was an immediate party. *Burke v. Smith*, 111 Md. 624 (illegal consideration). A few merely placed upon him the burden of proof of *bona fides* and value. *Nelson v. Cowing & Seymour*, 6 Hill (N. Y.) 336. The Negotiable Instruments Act limits its protection, in the case of instruments improperly filled out, to a "holder in due course" to whom the instrument has been "negotiated." Sec. 14. This has been held to exclude the payee on the ground that a negotiation, as distinguished from an issue, means delivery from one holder to another. *Vander Ploeg v. Van Zunk*, 135 Iowa 350. Cf. *Herdmann v. Wheeler*, (1902) 1 K. B. 361 (similar provisions of English Bill of Exchange Act). Both lines of authority just cited admit that the payee may become a "holder in due course," though not within the protection of Sec. 14 owing to the absence of a "negotiation." The effect of these holdings has been in some degree neutralized in England by a reversion to the old doctrine of estoppel. *Lloyds Bank v. Cooke*, (1907) 1 K. B. 794. Far preferable is the fully-established doctrine of Massachusetts, that the delivery of an instrument to the payee is a negotiation, and that he may therefore be within the rights of a holder in due course with reference to paper filled out contrary to authority. *Boston Steel & Iron Co. v. Stener*, 183 Mass. 140; *Liberty Trust Co. v. Tilton*, 217 Mass. 462. The presumption in favor of their interpretation due to the previous state of authority, is further strengthened by a comparison of Sec. 191, which expressly includes the payee within the term "holder," with Sec. 30, which defines a negotiation as a "transfer from one person to another in such manner as to constitute the transferee the holder thereof."

GUARDIAN AND WARD—CHILD'S ESTATE—PARENT'S BURIAL EXPENSES.—  
IN RE CONNOLLY'S ESTATE, 150 N. Y. SUPP. 559.—*Held*, where the general guardian of a deceased infant paid the burial expenses of its mother to save her from a pauper's grave, equity in consideration of the child's legal and moral obligation will allow reimbursement to the guardian out of his ward's estate.